



COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. 11-AR

August 5, 2013

Investigation by the Department of Telecommunications and Cable on its own motion, pursuant to G. L. c. 159, §§ 12, 32, and 39, and G. L. c. 166, §§ 11 and 12, regarding the failure by individually-named common carriers of telecommunications services to file annual returns for calendar years 2005, 2006, 2007, 2008, and/or 2009.

ORDER ON RECONSIDERATION AND VACATING JUDGMENTS

In the matter of:

Touchtone Communications, Inc.	2008	11-AR-4
Tele Circuit Network Corp.	2009	11-AR-14

I. INTRODUCTION

On July 1, 2013, Touchtone Communications, Inc. (“Touchtone”) filed a Motion for Reconsideration (“Motion”) in which it requested the Massachusetts Department of Telecommunications and Cable (“Department”) to reconsider findings made against Touchtone for the company’s failure to file an annual return. For the reasons discussed below, the Department grants Touchtone’s Motion and vacates the judgment against the company. Separately, for the reasons discussed below, the Department also reconsiders its findings and vacates the judgment against Tele Circuit Network Corporation (“Tele Circuit”).

II. BACKGROUND AND PROCEDURAL HISTORY

On June 3, 2013, the Department issued three Orders involving numerous companies’ failure to file annual returns for calendar years 2005, 2006, 2007, 2008, and/or 2009. *See* Orders D.T.C. 11-AR-A (“Order A”), D.T.C. 11-AR-B (“Order B”), and D.T.C. 11-AR-C (“Order C”). In Order A, the Department, *inter alia*, found that Touchtone failed to file its 2008 Annual Return (“2008 Return”) due to the Department on March 31, 2009, and that the failure to file was unreasonable. Order A at 11. The Department assessed statutory forfeitures against Touchtone totaling \$20,845.00, mandated cancellation of the company’s Statement of Business Operations (“SBO”) and tariff on file with the Department, and directed compliance with the Department’s Mass Migration Requirements. Order A at 13-15. Touchtone’s Motion specifies that, until receipt of Order A, the company did not receive any previous communications from the Department involving its delinquent return and that its failure to file its 2008 Return was due to “inadvertent error.” Motion at 1-2. Touchtone also indicates that it recently contracted with a new firm to handle its ongoing regulatory compliance. Motion at 2. With its Motion, Touchtone

also submitted its delinquent return with the appropriate filing fee. Touchtone requests that the Department reconsider its decision to cancel the company's SBO and tariff and to waive or substantially reduce the statutory forfeitures imposed on the company. Motion at 3.

In Order C, the Department, *inter alia*, found that Tele Circuit failed to file its 2009 Annual Return ("2009 Return") due to the Department on March 31, 2010, and directed cancellation of the company's SBO and tariff on file with the Department. Order C at 11, 24. On June 17, 2013, RTC Associates, LLC ("RTC") submitted a letter ("Letter") in lieu of a Motion for Reconsideration informing the Department that RTC had filed the delinquent 2009 Return on behalf of Tele Circuit in July 2012. Letter at 1. RTC indicates that Tele Circuit had zero reportable revenues for the period at issue. Letter at 1. *See also* 2009 Return. RTC's Letter also requested a stay of the appeal period. Letter at 1. Department staff located the delinquent return, noting that the filing omitted any reference as to why the return was late-filed and did not reference the docket assigned to Tele Circuit. As a result of this miscommunication, the docket's Hearing Officer never received a copy of the submittal and was unaware of the filing.

III. ANALYSIS AND FINDINGS

The Department's standard for reconsideration is well settled. The Department grants reconsideration of previously decided issues only when extraordinary circumstances dictate that the Department take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. *Verizon Resale Tariff*, D.T.C. 06-61, Order on Reconsideration, at 5-6 (2012); *Western Mass. Elec. Co.*, D.T.E. 00-110-C, at 9 (2001); *Fitchburg Gas & Elec. Light Co.*, D.T.E. 98-51-A, at 5-6 (1999) ("*Fitchburg*"); *North Attleboro Gas Co.*, D.P.U. 94-130-B, at 2 (1995); *Comm. Elec. Co.*, D.P.U. 92-3C-1A, at 3-6 (1995); *Boston Edison Co.*, D.P.U. 90-270-A, at 3 (1991). Extraordinary circumstances warranting

reconsideration include: (i) “previously unknown or undisclosed facts that would have significant impact upon the decision already rendered” newly brought to light, *Boston Edison Co.*, D.P.U. 90-270-A, at 2-3 (1991); or (ii) whether an issue was wrongly decided due to the Department’s mistake or inadvertence. *Mass. Elec. Co.*, D.P.U. 90-261-B, at 7 (1991); *New England Tel. & Tel. Co.*, D.P.U. 86-33-J, at 2 (1989). Further, the Department has broad discretion on whether to vacate a judgment. *See Complaint of MCI WorldCom, Inc.*, D.T.E. 97-116-E, *Order Denying Global NAPS, Inc.’s Motion to Vacate the Dept. Of Telecomms. and Energy’s Orders*, D.T.E. 97-116-C and D.T.E. 97-116-D/99-39, and to Reinstate D.T.E. 97-116-E, at 11, 13 (Jul. 11, 2000) (“D.T.E. 97-116-E”) (“[t]he Department rules on each motion in each proceeding based on the form and contents of the motion before it and on the specific facts before the Department at that time ... [and] has broad discretion to decide whether or not to vacate a judgment”). For the reasons discussed below, the Department reconsiders its cancellation of both companies’ SBOs and tariffs and vacates the judgments against Touchtone and Tele Circuit.

A. Touchtone

Touchtone’s Motion does not present to the Department any extraordinary circumstances that warrant the Department’s reconsideration. However, the Department finds that facts previously unknown or undisclosed on the record would have had a significant impact upon the Department’s decision. Specifically, based on the new facts, the Department would have extended the filing deadline for Touchtone’s 2008 Return and dismissed the case against the company. Therefore, the Department reconsiders and vacates its judgment against Touchstone by extending the filing deadline for Touchtone’s 2008 Return to the date of receipt by the Department, July 1, 2013.

The Department vacates the judgment against Touchtone, because documentation submitted with the Motion as well as documentation on file with the Department compels the Department to vacate the judgment against Touchtone. *See* 220 C.M.R. § 1.10(2); *D.T.E. 97-116*. In particular, Touchtone submitted a delinquent return indicating that the company had reportable intrastate operating revenue for the year at issue totaling \$49,931.00. 2008 Return at 3. Further, pursuant to 220 C.M.R. § 1.10(2), the Department notes that Touchtone has otherwise complied with its annual reporting obligations with the Department. *See* Touchtone Annual Returns submitted for Calendar Years 2002-2007 and 2009-2012. These returns indicate a steady decline in the company's reportable intrastate operating revenue. Most recently, Touchtone reported its 2012 operating revenue to be \$33,425.81, which reflects an approximate 33% decline in the company's revenues since 2008. If the Department assessed the full statutory forfeitures against Touchtone, the amount would constitute a majority of the company's most recent reported revenues.

Although carriers must file an annual return by March 31, the Department may, for good cause, fix a date later than March 31 for a carrier to file its annual return. G. L. c. 159, § 32; G. L. c. 166, § 11. In determining whether good cause exists for an extension of the filing deadline, "the Department must weigh the carrier's interest in receiving such an extension against the public's interest and the interests of any other affected parties." *Investigation by the Dep't of Telecomms. & Cable on its own motion, pursuant to G. L. c. 159, §§ 12, 32, 39, & G. L. c. 166, §§ 11, 12, regarding the failure by individually-named common carriers of telecomms. servs. to file annual returns for calendar years 2005, 2006, 2007, 2008, and/or 2009*, D.T.C. 11-AR, Order D.T.C. 11-AR-B ("Order B") at 12 (Jun. 3, 2013), *citing* *Pet'n of N.E. Tel. & Tel. Co. for*

an alternative regulatory plan for the co.'s Mass. intrastate telecoms. servs., D.P.U. 94-50, Order at 51-52 (May 12, 1995) (“*D.P.U. 94-50*”).

Although Touchtone’s return was delinquent due to an “inadvertent error,” Touchtone ultimately complied with the Department’s filing requirements. While Touchtone’s error is insufficient justification for failing to meet its reporting obligations and not previously responding to the Department, and its interests in receiving an extension are substantial (forfeitures that exceed 50% of the company’s most recent reportable revenue), there would be no benefit to the public if the Department refused to grant an extension to Touchtone. The Department knows of no other party that would be affected by a decision to grant Touchtone an extension. The Department does not excuse Touchtone’s oversight about the status of its statutory requirements but finds that it acted in good faith by ultimately cooperating with the Department, otherwise timely filing its annual returns with the Department for almost a decade, hiring a new firm to ensure ongoing compliance, and providing assurances that it will file annual returns on a timely basis going forward.

Accordingly, the Department, for good cause, establishes July 1, 2013, as the filing deadline for Touchtone’s 2008 Return. *See* G. L. c. 166, § 11; Order B at 13; *D.P.U. 94-50*. The Department extends this one-time courtesy to Touchtone with the expectation that Touchtone will comply with the Department’s requirements going forward. As Touchtone’s 2008 Return is now current, because the company has a history of compliance with the Department, and for the other reasons stated above, the Department grants Touchtone’s reconsideration request and vacates the judgment against the company.

B. Tele Circuit

Extraordinary circumstances warrant Department reconsideration of its judgment against Tele Circuit. Specifically, the Department's judgment against Tele Circuit was made prior to the Department obtaining knowledge of certain facts which are now known and that would have had a substantive impact on the Department's decision. Although late-filed in July 2012, Tele Circuit ultimately complied with the Department's filing requirements. Due to RTC's miscommunication with the Department, the Department did not consider this compliance as part of its findings against Tele Circuit. As a result, the Department reconsiders its decision to cancel Tele Circuit's SBO and tariff and vacates its judgment against the company.

Having vacated the judgment, the Department must now determine whether good cause exists to extend the filing deadline for Tele Circuit's 2009 Return. G. L. c. 159, § 32; G. L. c. 166, § 11. Because Tele Circuit ultimately complied with the Department's directives and the company reports zero dollars in intrastate revenues for 2009, the Department finds good cause exists to establish July 31, 2012, as the filing deadline for Tele Circuit's 2009 Return. The Department has previously recognized good cause to extend the filing deadline in such a circumstance. *See* Order B at 14 (extending the filing deadline for a company that the Department determined was not "doing business" for the purposes of the relevant annual returns statutory sections and for its ultimate compliance with the filing requirement). As Tele Circuit is now in compliance with its reporting requirements for the year at issue, the Department determines no further action against the company is necessary.

IV. ORDER

Accordingly, after consideration, it is

ORDERED: That the Motion for Reconsideration submitted by Touchtone on July 1, 2013, is GRANTED and the judgment against the company is VACATED; and it is

FURTHER ORDERED: That the judgment against Tele Circuit is VACATED.

By Order of the Department:

/s/ *Geoffrey G. Why* _____

Geoffrey G. Why

Commissioner

RIGHT OF APPEAL

Appeals of any final decision, order or ruling of the Department of Telecommunications and Cable may be brought pursuant to applicable federal and state laws.